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*Attorneys for Defendants IHC Health Services, Inc. dba Utah Valley Hospital; and IHC Health Services, Inc. dba Intermountain Medical Group*

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, NORTHERN DIVISION

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**Sara Parada**, individually, and as parent/guardian acting for and in behalf of **D.P.**, a minor child,

Plaintiff,  
vs.

**David Pennington, M.D.; Pennington Medical Center PLLC dba Pennington Women's Center; IHC Health Services, Inc. dba Utah Valley Hospital; IHC Health Services, Inc. dba Intermountain Medical Group; United States of America; Scott R. Jacob, M.D.; Valley Obstetrics & Gynecology, P.C. dba Valley Women's Health; Sean J. Henderson, D.O.; Bradley C. Burton, PA-C; Granger Medical Clinic, P.C.; and Does I-X,**

Defendants.

**Motion for Leave to File Amended Pleading and Crossclaim and Supporting Memorandum of Defendants IHC Health Services, Inc. dba Utah Valley Hospital and IHC Health Services, Inc. dba Intermountain Medical Group**

Case No. 2:21-cv-00534-TS-JCB

Judge Ted Stewart  
Magistrate Judge Jared C. Bennett

Defendants IHC Health Services, Inc. dba Utah Valley Hospital and IHC Health Services, Inc. dba Intermountain Medical Group (“**IHC Defendants**”), by and through counsel Robert G. Wright, Rafael A. Seminario, and Sean B. Leonard of RICHARDS BRANDT MILLER NELSON, and pursuant to Federal Rules of Civil Procedure 15(a)(2) and 13(g), submit this Motion for Leave to File Amended Pleading and Crossclaim and Supporting Memorandum against David Pennington, M.D.; Pennington Medical Center PLLC dba Pennington Women’s Center; Sean J. Henderson, D.O.; Bradley C. Burton, PA-C; and Granger Medical Clinic, P.C. (“**These Defendants**”).

IHC Defendants’ Motion should be granted to preserve their right to apportion fault to These Defendants. IHC Defendants’ motion is timely would not be unduly prejudicial to These Defendants. IHC Defendants’ Proposed Amended Answer and Crossclaim is attached as Exhibit 1.

#### **BACKGROUND FACTS**

On September 8, 2021, Plaintiff filed a Complaint alleging medical negligence on the part of all Defendants. Dkt. 2 - *Complaint*.

On August 24, 2022, These Defendants filed Motions for Summary Judgment claiming that their own experts had not established that These Defendants breached the applicable standard of care, and that Plaintiff’s experts had not offered expert testimony to the contrary. *See* Dkt. 62, 63.

IHC Defendants now file this Motion for Leave to File Amended Pleading and Crossclaim for the purpose of preserving their right to allocate fault to These Defendants at a later stage of the action.

## ARGUMENT

Leave to amend should be given “freely . . . when justice so requires.” FRCP 15(a)(2). In evaluating a motion for leave to amend, Utah courts focus on three factors: the timeliness of the motion, the justification given by the movant for the delay, and any resulting prejudice to the responding party. *Kelly v. Hard Money Funding, Inc.*, 2004 UT App 44, ¶ 26, 87 P.3d 734 (reversing trial court’s denial of motion to amend); *see also Daniels v. Gamma W. Brachytherapy, LLC*, 2009 UT 66, ¶ 58, 221 P.3d 256 (stating that a trial court is not required to make findings on all three factors).

### **1. IHC Defendants’ Motion to Amend is Timely and Justified.**

The IHC Defendants Motion is timely and justified. IHC Defendants did not file a crossclaim at the time their Answer to the Complaint was filed because such a crossclaim is typically not necessary for a factfinder to apportion fault among joint tortfeasor codefendants. *Nat'l Serv. Indus., Inc., v. B.S. Norton Mfg. Co.*, 937 P.2d 551, 556 n.2 (Utah Ct. App. 1997). IHC Defendants’ crossclaim has only become necessary at this point because These Defendants have filed Motions for Summary Judgment. *See* Docket 62, 63. To allow IHC Defendants to oppose any Motion for Summary Judgment, they must be allowed to amend their Answer and file a crossclaim against These Defendants. *Nat'l Serv. Indus., Inc.*, at 556 n.2 (“[W]here one codefendant moves for summary judgment against the plaintiff on the basis that it bears no liability—any other defendant must file an apportionment cross-claim in order to have standing to oppose the other codefendant’s motion”). Accordingly, IHC Defendants’ Motion to Amend is timely and any delay was justified because the necessity did not become clear until Plaintiff’s Motions for Summary Judgment were filed on August 24, 2022.

## **2. The Amendment and Crossclaim Do Not Prejudice These Defendants.**

Practitioner Defendants will not be unfairly prejudiced by allowing IHC Defendants to file an Amended Answer and Crossclaim.

“A primary consideration that a trial judge must take into account in determining whether leave should be granted is whether the opposing side would be put to unavoidable prejudice by having an issue adjudicated for which he had not had time to prepare.” *Bekins Bar V Ranch v. Huth*, 664 P.2d 455, 464 (Utah 1983). Here, These Defendants have been aware of the facts underlying IHC Defendants’ crossclaim since the very beginning of this case. They have had time to prepare their medical negligence defenses from the outset. The allegations in IHC Defendants’ Crossclaim are really no different from Plaintiff’s allegations in the initial Complaint, and These Defendants have been preparing the defense of these claims throughout discovery.

Moreover, the Fourth Affirmative Defense in IHC Defendants’ original Answer gave all parties notice that Plaintiff’s allegations pertained to . . .

the activities of third persons over whom [IHC] Defendants had no duty, control or right to supervise including, but not limited to, any other medical provider or providers who provided care to Ms. Parada and/or D.P. As part of this affirmative defense, [IHC] Defendants allege that discovery may reveal that these and/or other health care providers may have failed to appropriately and/or timely diagnose and/or treat Ms. Parada and/or D.P. [IHC] Defendants are therefore entitled to have the fault of all responsible parties, including but not limited to any other medical entity or provider against whom Plaintiff has made any claim, compared by the trier of fact pursuant to Utah Code Ann. §§ 78B-5-817 through 78B-5-821 and any other applicable Utah law. Defendants reserve the right to provide further factual and legal bases on which Defendants may allocate fault to third parties and reserves the right to amend this affirmative defense as further information and evidence becomes available through investigation and discovery.

Further, according to the Court's current Scheduling Order, Dkt. 46, fact discovery does not close until November 1, 2022, and expert discovery does not close until July 14, 2023. In other words, all parties have ample time to continue developing their cases, and These Defendants will not be unfairly prejudiced by allowing IHC Defendants to preserve their right to apportion damages.

## **CONCLUSION**

IHC Defendants' Motion for Leave to File Amended Pleading and Crossclaim should be granted because it is timely, justified, and does not unfairly prejudice These Defendants.

Dated this 25th day of August, 2022.

RICHARDS BRANDT MILLER NELSON

/s/ Robert G. Wright

Robert G. Wright  
Rafael A. Seminario  
Sean B. Leonard  
Attorneys for Defendants IHC Health Services,  
Inc. dba Utah Valley Hospital; and IHC Health  
Services, Inc. dba Intermountain Medical Group

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of August, 2022, I served the foregoing **Motion for Leave to File Amended Pleading and Crossclaim and Supporting Memorandum of Defendants IHC Health Services, Inc. dba Utah Valley Hospital and IHC Health Services, Inc. dba Intermountain Medical Group** on the persons identified below as indicated:

G. Eric Nielson	<input type="checkbox"/>	U.S. Mail – Postage Prepaid
Marianne P. Card	<input type="checkbox"/>	Hand Delivery
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*America*

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/s/ Penny Edwards

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